*** HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA**

+Writ Petition No. 25747 of 1997

%Dated 13.03.2007

Kishan Singh
S/o.Tulja Singh, aged 50 years,
R/o.Mamidipalli, Armoor Mandal,
Nizamabad District

… Petitioner.

VERSUS

$ 1. The Special Commissioner,
Land Revenue, Andhra Pradesh, Hyderabad
2. The Joint Collector, Nizamabad District
at Nizamabad.
3. The Revenue Divisional Officer,
Nizamabad District at Nizamabad.
4. The Mandal Revenue Officer,
Armoor, Nizamabad District. …
Respondents

! Counsel for Petitioner: Sri K. Raghuveer Reddy

^Counsel for Respondents: Government Pleader for Assignment

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>HEAD NOTE:

? Cases referred

1988(2) ALT 301

HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.25747 of 1997

Dated 13th day of March, 2007

Between:

Kishan Singh ..
Petitioner

And

The Special Commissioner,
Land Revenue, Andhra Pradesh,
Hyderabad
and four others ..
Respondents

Contemplate

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O R D E R:

This writ petition is filed seeking a mandamus to declare the order, dated 4.1.1997 passed by the 1st respondent-Special Commissioner, as arbitrary and illegal, and consequently set aside the same.

The brief facts of the case are that the petitioner is the absolute owner and possessor of the land admeasuring Ac.1.10 guntas in S.No.92 situated in Mamidipally village, Armoor Mandal, Nizamabad District. The Government, after collecting market value, granted patta and subsequently assigned the land to him in the year 1980 and since then he has been in continuous possession and enjoyment of it. Most of the conditions of the patta are applicable to the landless poor persons, who are assigned lands free of cost, but the petitioner was assigned the land on payment of fixed market value. When the petitioner applied to local Gram Panchayat for grant of layout, the 3rd respondent-Revenue Divisional Officer, without reference to any provisions of the Andhra Pradesh (Telangana Area) Land and Revenue Act (for brevity "the Act") passed an order dated 27.7.1991 cancelling the assignment of the land. Against this order, when the petitioner preferred an appeal, the 2nd respondent-Joint Collector,

without considering it in proper perspective, passed an order dated 7.1.1993 confirming the order of the 3rd respondent. Aggrieved by the order dated 7.1.1993, the petitioner filed a statutory revision under Section 166(B) of the Act before the 1st respondent-Special Commissioner, who, by the impugned order, dated 4.1.1997, dismissed the revision petition vacating the stay order granted earlier.

The learned counsel for the petitioner has contended that the format prescribed by the Government in respect of assignment of lands is in accordance with the Laoni Rules, 1950, but not specially meant for persons, who are assigned project-affected lands. The land assigned to the petitioner is a project-affected land and none of the conditions incorporated in the proceedings D.Dis.No.B3/5662/80, dated 18.10.1980 apply to him except Condition Nos.16 and 17, which specifically reveal that project-affected lands shall be assigned on payment of land value and the grantee shall not accrue full title to the land until the entire amount is paid and in fact, the petitioner has paid the entire amount determined by the Board of Revenue. He has further contended that the conditions laid down under A.P. Project-Affected Land Assignment Rules, 1961 do not reveal anywhere about cancellation of pattas. Hence, the order, dated 4.1.1997 passed by the 1st respondent-Special Commissioner is illegal and the same is liable to be set aside.

The learned Government Pleader for Assignment has contended that the petitioner, who is the assignee, did not bring the land under cultivation within a period of three years from the date of assignment, but intended to sell it away. The petitioner paid only Rs.500/-, which was charged to persons, who were assigned project-affected lands, but did not pay conditional payment i.e. market value of Rs.500/- per acre as per G.O.Ms.No.185 dated 25.2.1969 under

Nizamsagar Project, and thus, he has contravened the conditions laid down in the Proceedings (patta) dated 18.10.1980 issued by the Tahsildar, Armoor. She has further contended that the procedure adopted and the format prescribed by the Government for the purpose of assigning lands to the public are meant for all categories of persons under Laoni or Special Laoni Rules and also to persons, whose lands are affected by virtue of any project.

For the purpose of determining whether the land, which was assigned to the petitioner, is a project-affected land and the cancellation of his patta by the 1st respondent is sustainable or not, this Court feels it expedient to examine various rules framed under law.

Loani Rules, 1950,

In exercise of the powers conferred by Section 172 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 F., the Government is pleased to make the following Rules:-

1. *(a) These rules may be called the Loani Rules, 1950, and shall come into force from the date of their publication in the Gazette.*
   (b) From the date of enforcement of these Rules, the Laoni Rules, 1347 F, shall be repealed; but any action taken under the said Rules shall be deemed to have been taken under these Rules.
2. *Any person desiring to take up unoccupied land shall submit a petition to the Tahsildar in writing. This application need not be stamped. The person so applying shall not enter upon the land without obtaining the previous permission in writing from the Tahsildar's Office.*
3. *The village patwari shall furnish to any person desirous of so applying full information regarding the nature of the land available for being granted for cultivation. N o fee shall be charged for giving such information and if applicant is illiterate; the Patwari himself should if requested to do so, assist in writing the application.*
4. *(a) A separate file with a fly-sheet as per Form-A shall be opened in respect of each application received by the Tahsildar for land for laoni.*

(b) An Index Register of all the applications received shall be maintained in Form-B.

5. *(a) The applications shall be registered in the order in which they are received in a register in Form-C(1) to be opened separately for each kind of land such as (a) lands assessed as waste (b) unassessed lands and (c) reserved lands*

(b) Applications for vacant sites for building purposes, etc. shall be entered in registered inform-C (2).

(c) Each application on being duly entered in the registered shall

be forwarded by the Tahsildar to the Girdawar of the Halqa in which

the village is situate for submission of detailed inspection and report……..

Special Laoni

15. No land in the special area notified under Section 58-A of A.P. (Telangana Area) land Revenue Act, shall be assigned except in accordance with the following rules:-

(a) The object of the special laoni is to make land available in certain areas to such landless persons of agricultural and backward classes as may be notified from time to time, and who have not sufficient means to purchase land either at the ordinary laoni auctions or otherwise. The selection of the most deserving applicant should be made by Tahsildar after due publicity in the village or at the place fixed for the allotment proceedings.

(b) Special loani, proceedings may ordinarily take place twice a year in the months of April and September, and may also take place at other times when the Tahsildar is visiting the locality.

16. In making selection for special laoni preference shall be given to persons who reside in the village, but do not possess any patta or shikmi rights in any land in the village or elsewhere or who have insufficient land but possess bullocks and agricultural implements. Persons who are already cultivating lands are 'asamis' or bataidars' shall be given preference over other labourers.

17. *The persons selected by the Tahsildar shall be given possession of the land after auctioning the timber standing thereon. The auction purchaser shall be required to remove the timber within the time fixed by the Tahsildar having regard to the area and the volume of timber standing thereon: Provided that where the auction purchaser is the person selected, he shall be entitled to take possession of the land with the standing timber after payment of the auction amount: Provided further that where the Tahsildar has sufficient reasons to believe that the means of such person make it difficult for him to pay the auction amount in one lump sum, he may report accordingly to the Collector while submitting his proposal for the selection of such a person for confirmation of the Collector. The Collector may, if he thinks fit, order that the auction amount shall be recovered in three annual instalments, commencing from such date as may be fixed by the Collector according to his discretion and circumstances of the case.*

18. *The selection by the Tahsildar of any person for special laoni shall be confirmed by the Collector within a month from the date of the proposal for such selection, after satisfying himself that there has been no material irregularity in the proceedings.*

19. The allottee of the land shall prepare the land for cultivation within three years of being placed in possession and commerce cultivation of the land thereafter. The pattadar may be rejected by the order of the Collector for breach of any of the above conditions: Provided that he has been served with a notice calling upon him to comply with the conditions which he has violated and he fails to comply with it within three months of the date of service thereof. If lands have been transferred in contravention of the conditions, the Collector may eject the transferee.

20. After sanction has been accorded by the Deputy or Assistant Collector in the case of ordinary laoni and by the Collector in the case of special laoni, the Tahsildar shall obtain an agreement from the person to whom land is to be allotted and after recovering any amounts due shall give him permission in writing to occupy the land.

21. *The Tahsildar shall be careful not to give such permission until the auction amount of the timber, has been paid, unless the payment thereof by instalments has been allowed under proviso to Rule 17. All amounts realized from the auction of timber, shall be credited to the Forest Department.*

22. *Land revenue shall be payable from the crop session in which possession of the land was given:*
Provided that in the case of unoccupied or waste land which is granted on patta under special laoni, the Collector may, if he is satisfied that the land has been brought into cultivation or all possible efforts are being made for its cultivation, remit the land revenue for a period not exceeding three years from the date the allottee of the land is placed in possession of the land.

23. *The special laoni provisions shall apply to all applications for assessed land which are not reserved. The Tahsildar may grant pattas under the rules laid down above.*

24. *A register shall be maintained as in Form "I" in respect of all lands granted under Special Laoni Rules.*

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The Andhra Pradesh Project Affected Lands Assignment Rules, 1961 (G.O.Ms.No.1070, Revenue 20th June, 1961

In exercise of the powers conferred by Section 172 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli (Act VIII of 1317 Fasli), the Governor of Andhra Pradesh hereby makes the following rules:

1. *These rules may be called the Andhra Pradesh Project Affected Lands Assignment Rules, 1961 (G.O.Ms.No.1070, Revenue 20th June, 1961.*
2. *In these rules, unless the context otherwise requires-*
   - *i) "Project" means*
     - *a) any irrigation or drainage work, the lands under which are liable for levy and payment of betterment contribution under the Hyderabad Irrigation (Better Contribution and Inclusion Fees) Act, 1952 (Hyderabad Act V of 1952), or the Andhra Pradesh Irrigation (Levy of Betterment Contribution) Act, 1955 (Act XXV of*

1955), as the case may be, and

b) any other irrigation or drainage work, in the project estimate of which credit has been taken for the sale proceeds of Government lands, although the lands under such work may not be liable for levy of betterment contribution, and for the Government lands under which work no separate rules for assignment have been issued;

ii) "Projects under investigation" means projects for the investigation of which provision has been made in the Five Year Plan.

iii) "Project affected lands" means all lands covered by projects of the following categories, namely:-

a) Projects completed after the 15th August, 1947

b) Projects under execution

c) Projects, the execution of which has already been sanctioned; and

d) Projects under investigation.

3. ***(1) Assignment of project affected lands, shall be made subject to the payment of such market value as was taken credit for, in the final estimates of the project concerned, in their unirrigated condition;***

Provided that the value does not exceed the price which the lands may fetch, if sold at the time of assignment.

(2) No assignment of lands affected by projects under execution will be made until the alignment of the main channels and distributaries is indicated by the Chief Engineer and the claims of the persons whose lands might be required for the purpose of the project are settled.

4. *Assignment of lands covered by Projects under investigation may be made subject to the liability of the assignee to pay such land value as may be fixed by the Board of Revenue, having regard to their unirrigated condition at the date of assignment. No refund of land value collected for the assignment of lands under a project under investigation will be made even though the project may not ultimately be executed. A condition to this effect shall be incorporated in the order of assignment relating to these lands.*

5. ***Market value shall be collected in twenty instalments together with the interest thereon. The Board of Revenue***

shall be the authority to determine the market value payable by the assignees of project-affected lands and the assignee shall be liable to pay betterment contribution in addition to the market value.

6. ***The assignment of project-affected lands shall be subject to the condition that the Government may resume if they are required for project works only.***

   Provided, however, that in the event of resumption, the market value, if any, collected from the assignee shall be refunded to him but no compensation shall be payable to him for any improvement that might have been made by him to the land."

From the above Rules, it is transparent that the assignment of lands to the landless poor persons or others are governed by Laoni Rules, 1950, dated 16.11.1950. Laoni means cultivation of land lying fallow. These Rules are of two kinds i.e. Laoni Rules and Special Laoni Rules. Laoni Rules are made for persons who are capable of purchasing land in public auctions for the purpose of cultivation and the Special Laoni Rules are applicable to landless persons, who belong to agricultural and backward classes and do not have sufficient means to purchase land either at the ordinary Laoni auctions or otherwise. Several conditions are stipulated under Laoni Rules, some of which, are enumerated above. Later, in the year 1958, the Government, having examined the question on integrating the provisions relating to the assignment of Government lands obtaining in the Andhra and Telangana Areas of the State and with a view to evolving a common policy for both the areas, issued G.O.Ms.No.1406 (Revenue) dated 25.7.1958. Subsequently, it also issued Revised Assignment Policy in G.O.Ms.No.1724 (Revenue) dated 26.8.1959.

In G.O.Ms.No.1406, the Government, while prescribing the procedure at Clause-XI, clearly stated that the Rules under this Order have no application for assignment of project-affected lands, and thus, the Andhra Pradesh Project-Affected Land Assignment Rules, 1961

were specially framed in G.O.Ms.No.1070, dated 20.6.1961. According to the terms of the G.O., the assignment of project-affected lands, shall be made subject to payment of such market value as was taken credit for in the final estimates of the project concerned in their unirrigated condition.

No doubt, there were assignments in favour of individuals both under Laoni Rules and Special Laoni Rules. Similarly, certain assignments were also made to persons, whose lands were affected by virtue of projects, and in that case, the Government collected notional market value and thus, G.O.Ms.No.1070, Revenue 20th June, 1961 came into existence. In the instant case, the petitioner, in my considered view, does not come within the scope of Laoni Rules and his allotment is squarely covered by the terms of G.O.Ms.No.1070, i.e. the A.P. Project-Affected Land Assignment Rules because he was assigned the land on the ground that he is a project-affected person and he was directed to pay fixed market value as determined by the Board of Revenue in 15 instalments and the petitioner paid the entire market value in addition to the betterment contribution as termed in the A.P. Project-Affected Land Assignment Rules and the Government also accepted his payment.

So far as the format prescribed by the Government for assignment of lands is concerned, in my considered view, it applies only to persons, whose lands are assigned under Laoni or Special Laoni Rules, but not for others, however, according to the learned Government Pleader for Assignment, the Government is using the same format for all kinds of assignments that are made under Laoni or Special Laoni Rules or the Project-Affected Land Assignment Rules i.e. to persons, whose lands are affected by virtue of any project. Hence, this Court is of the view that the format prescribed in accordance with Laoni or Special Laoni Rules cannot be used for

assignment of lands to persons, whose lands are affected by virtue of any project. However, in the instant case, it is to be noticed that as the format prescribed by the Government for assignment of lands is being used for all categories of persons, the proceedings of the Tahsildar assigning Ac.1.10 guntas of land to the petitioner clearly indicate at Condition Nos.16 and 17 that in respect of project affected land, the assignment shall be subject to payment of land value which shall be collected in 20 instalments together with such interest as is specified by the Government. These two conditions are in conformity with the provisions contemplated under Rules 3(1) and 5 of A.P. Project-Affected Land Assignment Rules, 1961, and in reality, the petitioner has paid the entire market value i.e. Rs.621/- in addition to the betterment contribution on 26.12.1990 as determined by the Board of Revenue. Hence, this Court has no hesitation to hold that the petitioner is an assignee of a project-affected land.

The prime aspect, which prompted the petitioner to challenge the impugned order, is with regard to the cancellation of patta on the ground that the assigned land was alienated and it was not brought under cultivation within a period of three years from the date of assignment. Here, it is to be noticed that no condition as to either non-alienation of land or the land assigned shall be brought under cultivation within three years of assignment is stipulated in G.O.Ms.No.1070. The A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 prohibits transfer of lands assigned to landless poor persons. As per Section 2(1) of the A.P. Assigned Lands (Prohibition of Transfers) Act, the assigned lands mean lands assigned by the Government to the landless poor persons under the rules for the time being in force, subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings; and the word “assigned” shall be construed accordingly. Whereas, in the

instant case, the petitioner is the one, whose land is project-affected, but not a landless poor person, and this Court, in **Dharma Reddy Vs. Sub-Collector**[1] held that the land assigned to a person, who is affected by construction of irrigation project on payment of concessional market value or sale of such land is not governed by the provisions of A.P. Assigned Lands (Prohibition of Transfers) Act. The relevant portion of the judgment is to the following effect:

> *"However, the Sub-Collector seems to say that the patta certificate has a condition containing a clause forbidding alienation. Sri Subhashan Reddy has argued that these general clauses on a printed form, which is of multi-purpose applicability, cannot be read to have application to a case like this. I am inclined to agree with the learned counsel. If Mohalaiah had not lost his land by reason of the project, he would have unfettered right to alienate his original lands. It must be held that his right of alienation will attach itself to the lands given to him in lieu of the lost lands. It is significant that G.O.Ms.No.1294 does not contemplate imposition of any such condition of inalienability."*

From the above-noted principle, this Court is of the view that the provisions of A.P. Assigned Lands (Prohibition of Transfers) Act have no application whatsoever to the case of the petitioner herein, who is assigned project-affected land on payment of market value. Hence, the view taken by the 1st respondent-Special Commissioner that the petitioner infringed the conditions of the patta by alienating the land and not bringing it to cultivation within a period of three years from the date of assignment is baseless and illegal.

Moreover, no rule under A.P. Project-Affected Land Assignment Rules, 1961 contemplates cancellation of assignment against alienation of project-affected lands. At the most, the provision under Rule 6 of the A.P. Project-Affected Land Assignment Rules says that the assignment of project-affected lands shall be subject to the

condition that the Government may resume if they are required for project works only, provided, however, that in the event of resumption, the market value, if any, collected from the assignee shall be refunded to him but no compensation shall be payable to him for any improvement that might have been made by him to the land. From this proviso, this Court is of the considered view that the order of cancellation of assignment of the land to the petitioner is wholly unsustainable and the same is liable to be set aside.

In the result, the writ petition is allowed and the order dated 4.1.1997 of the 1st respondent-Special Commissioner is set aside. No costs.

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13.03.2007

Note: L.R. Copy to be marked
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[1] 1988(2) ALT 301